THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.4575 1995

-

Dated 20-02-2006

Between:

Syed Yakub Ali.

..... PETITIONER

AND

Sports Authority of Andhra Pradesh, L.B Stadium, Hyderabad rep. by its Vice Chairman & Managing Director.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.4575 of 1995

-

-

O R D E R:

-

In this writ petition, the petitioner questions the action of the respondents in not promoting him as Grade I Coach with effect from 01-01-1988 and in not granting notional increments during the period of his foreign service.

Brief facts, to the extent necessary, are that the petitioner was appointed in the

erstwhile Sports Council of Andhra Pradesh in the year 1972 as a Basketball Grade III Coach. Subsequently, with effect from 01-01-1978, he was promoted as Grade II Coach. Petitioner would contend that since he had completed 10 years of service as Grade II Coach, he was entitled to be considered for promotion as Grade I Coach with effect from 01-01-1988. Petitioner would refer to the fact that when other Grade II Coaches were denied promotion, they approached this Court by filing several writ petitions. During the pendency of the said writ petitions before this Court, the first respondent issued proceedings dated 14-06-1993, wherein it was decided that Coaches who had completed 10 years of service as Grade II Coaches, would be promoted notionally as Grade I Coaches in the scale of Rs.2950-100-4050 from the date of completion of 10 years with monetary benefit from 01-01-1993. While 34 Grade II Coaches were promoted and given monetary benefit from 01-01-1993, the petitioner was denied promotion.

In the counter affidavit filed on behalf of respondents, it is stated that promotion to the post of Grade I Coach is not automatic, that a duly constituted Selection Committee selects candidates on the basis of their previous record of service. It is stated that the petitioner was imposed a punishment of stoppage of one increment with cumulative effect and recovery of Rs.118.56, towards the cost of two Basket Balls, was ordered vide proceedings dated 02-08-1975. It is stated that the petitioner was again imposed the punishment of stoppage of one annual grade increment with cumulative effect, vide proceedings dated 08-04-1994, for failure to attend the state meet for C.Ms cup tournament held from 12th to 15th June, 1993 and to supply uniforms to the participants of Khammam District in the sports meet, due to which Khammam District was denied entry and remained unrepresented in the march past. It is stated that the petitioner was placed under suspension, vide proceedings dated 13-06-1993, and subsequently, reinstated, vide proceedings dated 22.11.1993.

Sri K.Raghuveer Reddy, learned counsel for the petitioner, would submit that denial of promotion to the petitioner was on two grounds, firstly the imposition of punishment of stoppage of one increment without cumulative effect, vide proceedings dated

02-08-1975, and the second that he was placed under suspension for failure to attend the state meet and to supply uniforms to the participants in the Khammam District. Learned counsel would submit that the earlier punishment imposed on 02-08-1975, cannot be made the basis for denying promotion to the petitioner as Grade

I Coach since the said punishment was not even made the basis for denying him promotion as Grade II Coach with effect from 01-01-1978. Learned counsel would contend that mere suspension cannot be a ground for denying promotion, more so, in the absence of any specific rules in this regard. With regard to the subsequent imposition of punishment of stoppage of one increment with cumulative effect, vide proceedings dated 08-04-1994, learned counsel would submit that since this order of punishment was subsequent to proceedings of the departmental promotion committee dated 14-06-1993, whereby other Grade II Coaches were promoted as Grade I Coaches, this punishment could not have weighed with the respondents in denying promotion to the petitioner. Learned counsel would submit that, in any event, this order of punishment has been modified, in W.P.No.12202 of 1994, dated 27-02-2004, to that of stoppage of one increment without cumulative effect, a minor penalty which does not warrant denial of promotion.

Sri K.Janardhan Rao, learned Standing counsel for the respondents, would refer to the statutory rules, more particularly, Rule 18, which relates to Recruitment by Promotion, in support of his submission that the petitioner was not entitled to be promoted as Coach Grade I and that the action of the respondents in denying him promotion was legal and valid. Learned standing counsel would place before this Court, a copy of the proceedings dated 14-06-1993, wherein it is specifically stated that promotion of six coaches would be considered after finalisation of the disciplinary cases pending against them. The petitioner was one among these six coaches

Rules 18(2), (3), (4), (6) and 8(iii) read as under:

1. ……

2. Appointment to a post in any grade by promotion shall be made whether in a substantive or officiating capacity from amongst the employees of SAAP from the next lower grade in line for promotion on the basis of a formally constituted Departmental promotion committee (DPC).

3. The Departmental Promotion Committee shall be constituted with the following Officers:

(i) V.C. & M.D., SAAP : Chairman

(ii) Deputy Secretary to Govt.,

E.G. & Y.S. Department : Member

(iii) Director, SAAP : Member

(iv) Deputy Director, (T) : Member

(v) Administrative Officer : Member

4. Only cases of employees who possess the prescribed qualifications and who completes five years of service in a Grade/post shall be eligible for consideration for promotion to the next higher grade/post.

5. …….

6. Every appointment by promotion to posts under senior and junior posts shall be made by selection on the basis of merit with due regard to seniority. In the case of candidates of equal merit the senior should be given preference.

7. ……..

8. (i)…….

(ii)…….

(iii) After putting in 5 years of service in the post of Coach Grade-II he is eligible for consideration for the promotion to the post of Coach Grade-I;……

It is clear therefrom that appointment to a post is on the basis of selection by a formally constituted Departmental Promotion Committee and the criteria for promotion is on the basis of merit with due regard to seniority. Under Rule 18(8) (iii) an employee who has put in 5 years of service in the post of Grade-II Coach is eligible for consideration for promotion to the post of Grade-I Coach.

The fact, however, remains that pursuant to the understanding arrived at between the first respondent and the Coaches,

34 Grade II Coaches, were automatically given promotion as Grade-I Coaches on completion of 10 years of service. While the statutory rules provide for consideration of Grade-II Coach to be promoted as Grade-I Coach on completion of 5 years of service, these 34 employees were promoted as Grade-I Coaches on completion of 10 years of service, vide proceedings dated

14-06-1993. The proceedings dated 14-06-1993 does not indicate any comparative evaluation of the merit of these 34 candidates. There is substantial force in the submission of Sri K.Raghuveer Reddy, Learned counsel for the petitioner, that promotion was automatic and solely on the basis that all of them had completed 10 years of service as Coaches Grade-II.

The statutory rules, governing the conditions of service of employees of the respondent Corporation provide that promotion to higher posts is to be made on the basis of the recommendations of the departmental promotion committee. The proceedings dated 02-08-1975, whereby the petitioner was imposed the punishment of stoppage of one increment with cumulative effect, was more than two decades prior to 14-06-1993, the date on which the departmental promotion committee considered the cases of Coaches Grade II for promotion as Coaches Grade I. It cannot therefore be made the basis to deny the petitioner, promotion as Grade I Coach, more so, as even after the said punishment was imposed on 02-08-1975, the petitioner had been promoted as Grade II Coach with effect from 01-01-1978.

The other order of punishment is dated 08-04-1994, which is subsequent to the date on which the departmental promotion committee met, to consider the case of other employees, in June, 1993. The mere fact that the petitioner had been placed under suspension on 13-06-1993, prior to the date on which the departmental promotion committee met on 14-06-1993, would not justify his not being considered for promotion, more so as the statutory rules are silent in this regard. There is substantial force in the contention of Sri K.Raghuveer Reddy, learned counsel for the petitioner, that since the order of punishment imposed on 08-04-1994, was modified by this Court to stoppage of one increment without cumulative effect, which is a minor penalty, the petitioner cannot be denied promotion as Grade I Coach or for being extended the monetary benefit from 01-01-1993 till the date on which he reached the age of superannuation on 31-05-1995, more so, as 34 Grade II Coaches were automatically promoted as Grade I Coaches and given the said monetary benefit. It is however not for this Court, under Article 226 of the Constitution of India, to issue a Mandamus to the respondents to promote the petitioner, since under the statutory rules, it is the departmental promotion committee, which is required to take an appropriate decision in this regard.

With regards the other contention for payment of increments for foreign service, Sri K.Raghuveer Reddy, learned counsel for the petitioner, would contend

that since one Sri P.Ram Mohan Rao was given the said benefit of increments during his foreign service, there was no reason for the petitioner to be denied the same. Respondents, in their counter-affidavit, would however submit that the said amounts should not have been paid to Sri P.Ram Mohan Rao since the rules do not so provide. It is necessary to note that Sri P.Ram Mohan Rao is not made a party to the present writ petition. No statutory provision has been brought to the notice of this Court, which would entitle the petitioner to be given the said benefit. The petitioner's claim for payment of this increment is solely on the ground of discrimination inasmuch as Sri P.Ram Mohan Rao was conferred the said benefit. As held by the Supreme Court in **Chandigarh Administration v. Jagjit Singh**, the plea of discrimination would not be accepted by this Court where the benefit conferred on a person is said to be illegal and conferring the same benefit on the petitioner, would amount to perpetuating an illegality. The relief sought for, insofar as the benefit of notional increments for foreign services is concerned, must necessarily be rejected.

However, insofar as the petitioner's entitlement for promotion as Grade-I Coach with effect from 01-01-1988 and monetary benefits with effect from 01-01-1993 is concerned, the departmental promotion committee shall take an appropriate decision and communicate the same to the petitioner. Sri K.Raghuveer Reddy, learned counsel for the petitioner, would seek permission of this Court to enable the petitioner to submit a detailed representation to the first respondent within two weeks from the date of receipt of a copy of this order. The first respondent shall take necessary action to constitute a departmental promotion committee, which shall take an appropriate decision with regard to the promotion of the petitioner as Grade-I Coach with effect from 01-01-1988 and for monetary benefits from 01-01-1993, within two months from the date of receipt of a copy of the representation submitted by the petitioner. The first respondent shall communicate the decision of the departmental promotion committee to the petitioner herein and in case the respondents accept the claim of the petitioner, the petitioner shall be paid differential salary for the period from
01-01-1993, till the age of superannuation i.e., on 31-05-1995, with all consequential benefits, within two months thereafter.

The writ petition is accordingly disposed of. There shall be no order as to

costs.

_____

20-02-2006

usd